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6 IN THE UNITED STATES DISTRICT COURT
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8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 JARRITOS, INC.,

10 Plaintiff,

No. C 05-02380 JSW

11 v.

12 LOS JARRITOS, et al.,

13 Defendants.

**ORDER GRANTING
DEFENDANTS' MOTION FOR
LEAVE TO AMEND**

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15 Now before the Court is the motion by defendants Los Jarritos, Dolores Reyes dba Los
16 Jarritos ("Reyes"), and Francisco Reyes (collectively, "Defendants") to for leave to amend their
17 answer to add two new affirmative defenses and two new counterclaims. The motion for leave
18 to amend is now fully briefed and ripe for decision.¹ The Court finds that this matter is
19 appropriate for disposition without oral argument and the matter is deemed submitted. *See* N.D.
20 Civ. L.R. 7-1(b). Accordingly, the hearing set for September 22, 2006 is VACATED. Having
21 carefully reviewed the parties' papers, considered their arguments and the relevant legal
22 authority, the Court hereby GRANTS Defendants' motion for leave to amend.

23 Federal Rule of Civil Procedure 15(a) permits a party to amend its pleading once as a
24 matter of right at any time before a responsive pleading is served. Once a responsive pleading
25 has been served, however, amendment requires written consent of the adverse party or leave of
26 the court. In accordance with the Rule 15(a)'s liberal pleading standard, leave of the court
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¹ On September 10, 2006, Plaintiff filed a request to file a sur-reply. The Court DENIES Plaintiff's request.

1 “shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a). Though the decision to
2 grant or deny a motion for leave to amend is governed by the district court’s discretion, the
3 general rule is that amendment of the pleadings is to be permitted unless the opposing party
4 makes a showing of bad faith, undue delay, prejudice to the opposing side, and futility of
5 amendment. *See Forman v. Davis*, 371 U.S. 178, 230 (1962); *Lockheed Martin Corp. v.*
6 *Network Solutions, Inc.*, 194 F.3d 980, 986 (9th Cir. 1999).

7 First, Defendants argue that their proposed amendments are based in part on documents
8 they recently received from Plaintiff regarding the ownership and registration of the trademarks
9 at issue. Moreover, the parties stipulated to, and the Court agreed, to extend the deadline to file
10 any motion to amend until July 14, 2006. (Docket No. 39.) Defendants filed their motion to
11 amend within this deadline. Therefore, there is no evidence of undue delay in moving to amend.

12 Second, there is no evidence of bad faith.

13 Third, there is no evidence of prejudice to Defendants in this matter. To the extent
14 Plaintiff wants an opportunity to conduct discovery, the Court hereby extends the discovery cut-
15 off for 90 days from the date of this Order for the limited purpose of conducting discovery on
16 the new affirmative defenses and counterclaims.

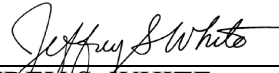
17 Lastly, Defendants argue that the amendment is futile. Leave to amend is properly
18 denied where the amendment would be futile. *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d
19 655, 658 (9th Cir. 1992). Plaintiff argues that there are documents which prove that it owns the
20 trademarks at issue and that the registrations are now incontestible. Even if it were proper for
21 the Court to evaluate extrinsic evidence in determining whether leave to amend should be
22 granted, Plaintiff did not submit the documents upon which it relies to the Court. Therefore, the
23 Court cannot determine whether Plaintiff’s arguments are well supported. Moreover, Plaintiff’s
24 arguments are based on underlying facts and thus, are better resolved on a motion for summary
25 judgment or trial, rather than at the pleading stage. Therefore, the Court declines to find at this
26 procedural stage that Defendants’ proposed amendments are futile.

27 Plaintiff having failed to demonstrate bad faith, undue delay, prejudice or futility of
28 amendment, the Court exercises its discretion and grants Defendants’ motion for leave to amend

1 their answer to add the proposed two affirmative defenses and counterclaims. Defendants shall
2 file and serve the amended answer and counterclaims within 10 days of this Order. Plaintiff
3 shall answer or otherwise respond within 20 days of service of the amended answer and
4 counterclaims.

5 **IT IS SO ORDERED.**

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7 Dated: September 19, 2006



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

United States District Court

For the Northern District of California